

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, DC

ORDER NO. 12,094

IN THE MATTER OF:

Served July 17, 2009

IBRAHIM A. FAHADI, Suspension and)
Investigation of Revocation of)
Certificate No. 982)

Case No. MP-2007-117

IBRAHIM A. FAHADI, Suspension and)
Investigation of Revocation of)
Certificate No. 982)
)

Case No. MP-2009-090

This matter is before the Commission on respondent's failure to respond to Order No. 11,883, served March 11, 2009, and Order No. 12,034, served June 8, 2009.

Order No. 11,883 directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 982.

Order No. 12,034, directed respondent to cease operating, replace an expired WMATC Insurance Endorsement, and pay a \$50 late insurance fee.

I. BACKGROUND

Under the Compact, a WMATC carrier may not engage in transportation subject to the Compact if the carrier's certificate of authority is not "in force."¹ A certificate of authority is not valid unless the holder is in compliance with the Commission's insurance requirements.²

Commission Regulation No. 58 requires respondent to insure the revenue vehicles operated under Certificate No. 982 for a minimum of \$1.5 million in combined-single-limit liability coverage and maintain on file with the Commission at all times proof of coverage in the form of a WMATC Certificate of Insurance and Policy Endorsement (WMATC Insurance Endorsement) for each policy comprising the minimum.

Certificate No. 982 was rendered invalid on June 6, 2007, when the \$1.5 million primary WMATC Insurance Endorsement on file for respondent terminated without replacement. Order No. 10,529, served June 6, 2007, noted the automatic suspension of Certificate No. 982 pursuant to Regulation No. 58-02, directed respondent to cease transporting passengers for hire under Certificate No. 982, and gave respondent thirty days to replace the cancelled endorsement and pay

¹ Compact, tit. II, art. XI, § 6(a).

² Compact, tit. II, art. XI, § 7(g).

the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 982.

Respondent paid the late fee on June 8, 2007, and submitted a \$1.5 million primary WMATC Insurance Endorsement on June 11, 2007, with an effective date of June 20, 2007, instead of June 6, 2007. Thus, as matters stood then, respondent was without insurance coverage for fourteen days, from June 6, 2007, through June 19, 2007.

Under Commission Rule No. 28, respondent was required to verify that he ceased transporting passengers for hire under Certificate No. 982 as directed by Order No. 10,529. Order No. 10,643, served July 20, 2007, accordingly directed respondent to verify cessation of operations as of June 6, 2007. Inasmuch as respondent's general tariff covered service rendered to the general public and to clients of the Easter Seal Society and the District of Columbia Department of Health, Medical Assistance Administration (DC Medicaid), the verification was to be corroborated with copies of respondent's general business records and confirmation from the Easter Seal Society and DC Medicaid.

Respondent thereafter submitted a revised \$1.5 million replacement WMATC Insurance Endorsement on August 3, 2007. The revised replacement is effective June 6, 2007; thus eliminating the 14-day gap in coverage under the original replacement endorsement. Respondent also filed a statement asserting that he provided transportation for DC Medicaid passengers only, and a statement from ACS State Healthcare, DC Medicaid's agent for processing carrier invoices, stating that as of August 8, 2007, respondent had not submitted any claims for service on or after June 6, 2007.

Respondent, however, did not file any statement from the Easter Seal Society corroborating respondent's representation that he only transported DC Medicaid passengers notwithstanding a tariff on file with the Commission for service to Easter Seal passengers. Respondent's own statement stops short of a clear declaration that respondent ceased all operations in the Metropolitan District on June 6, 2007, in accordance with Order No. 10,529. Indeed, respondent's bank statements show a substantial number of transactions at service stations during the suspension period consistent with gasoline purchases. The number of purchases actually appears to have accelerated after June 6, 2007. This purchase activity is not consistent with a halt in operations. The deposit activity reflected in respondent's bank statements is not consistent with a halt in operations, either. Bank statements were the only business records respondent produced in response to Order No. 10,643, and they were incomplete at that.

Inasmuch as respondent had closed the 14-day coverage gap and reestablished compliance with Regulation No. 58, Order No. 10,850, lifted the suspension, but given the state of the record, respondent was directed to file or produce: (1) a written statement clearly stating whether respondent timely ceased all operations in the Metropolitan District; (2) a statement from the Easter Seal Society

corroborating respondent's claim that the Easter Seal Society was not one of respondent's clients during the suspension period; and (3) copies of all business records, including copies of bank deposit items and gas station receipts, for the period beginning April 1, 2007, and ending October 19, 2007. Respondent did not respond.

Order No. 11,883 accordingly directed respondent to show cause why the Commission should not assess a civil forfeiture against respondent, and/or suspend or revoke Certificate No. 982, for knowingly and willfully violating Article XI, Section 6(a), of the Compact and Order No. 10,529, by conducting operations under an invalid/suspended certificate of authority, and for knowingly and willfully violating Order Nos. 10,643 and 10,850 by not producing all documents required by those orders.

In the meantime, the WMATC Endorsement supporting the lifting of suspension in Order No. 10,850 subsequently terminated without replacement on June 6, 2009. The Commission responded by initiating Case No. MP-2009-090 and issuing Order No. 12,034 on June 8. The order noted the automatic suspension of Certificate No. 982 as of June 6 pursuant to Regulation No. 58-12, directed respondent to cease transporting passengers for hire under Certificate No. 51, and gave respondent thirty days to replace the terminated endorsement and pay the \$50 late fee due under Regulation No. 67-03(c) or face revocation of Certificate No. 982.

Respondent has responded to neither order.

II. ASSESSMENT OF FORFEITURE AND REVOCATION OF AUTHORITY

A person who knowingly and willfully violates a provision of the Compact, or a rule, regulation, requirement, or order issued under it, or a term or condition of a certificate shall be subject to a civil forfeiture of not more than \$1,000 for the first violation and not more than \$5,000 for any subsequent violation.³

The Commission may suspend or revoke all or part of any certificate of authority for willful failure to comply with a provision of the Compact, an order, rule, or regulation of the Commission, or a term, condition, or limitation of the certificate.⁴

The term "knowingly" means with perception of the underlying facts, not that such facts establish a violation.⁵ The terms "willful" and "willfully" do not mean with evil purpose or criminal intent; rather, they describe conduct marked by intentional or careless disregard or plain indifference.⁶

³ Compact, tit. II, art. XIII, § 6(f).

⁴ Compact, tit. II, art. XI, § 10(c).

⁵ *In re Metro Health-Tech Servs. Inc.*, No. MP-08-057, Order No. 11,588 (Sept. 24, 2008).

⁶ *Id.*

We will assess a forfeiture of \$250 for respondent's knowing and willful failure to produce documents as directed by Order Nos. 10,643 and 10,850.⁷

In addition, we shall revoke Certificate No. 982 for respondent's willful failure to maintain on file with the Commission an effective WMATC Insurance Endorsement.

THEREFORE, IT IS ORDERED:

1. That Case Nos. MP-2007-117 and MP-2009-090 are hereby consolidated pursuant to Rule No. 20-02.

2. That pursuant to Article XIII, Section 6(f), of the Compact, the Commission hereby assesses a civil forfeiture against respondent in the amount of \$250 for knowingly and willfully violating Order Nos. 10,643 and 10,850.

3. That the \$50 late insurance fee under Regulation No. 67-03(c) shall remain due.

4. That respondent is hereby directed to pay to the Commission within thirty days of the date of this order, by money order, certified check, or cashier's check, the sum of three hundred dollars (\$300).

5. That pursuant to Article XI, Section 10(c), of the Compact, Certificate of Authority No. 982 is hereby revoked for respondent's willful failure to comply with Regulation No. 58.

6. That within 30 days from the date of this order respondent shall:

- a. remove from respondent's vehicle(s) the identification placed thereon pursuant to Commission Regulation No. 61;
- b. file a notarized affidavit with the Commission verifying compliance with the preceding requirement; and
- c. surrender Certificate No. 982 to the Commission.

BY DIRECTION OF THE COMMISSION; COMMISSIONERS CHRISTIE AND BRENNER:



William S. Morrow, Jr.
Executive Director

⁷ See *In re Westview Med. & Rehab. Servs., P.C. Inc.*, No. MP-07-070, Order No. 10,882 (Nov. 2, 2007) (assessing \$250 for failure to timely produce documents).